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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
DEPUTY



08-CV-01835-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARLO I. HARRISON,

Plaintiff,

vs.

The CITY OF TUKWILA, a municipal
corporation; TUKWILA POLICE OFFICER C.
GARDNER, TUKWILA POLICE OFFICER S.
FORNEY, and JOHN DOE Tukwila POLICE
OFFICERS 1-5,

Defendants.

No. **C08-1835** MJP

COMPLAINT FOR ASSAULT AND
BATTERY, OUTRAGEOUS
CONDUCT, USE OF EXCESSIVE
FORCE, INTENTIONAL
INFLECTION OF EMOTIONAL
DISTRESS, AND NEGLIGENCE

JURY DEMAND

Plaintiff Marlo I. Harrison alleges as follows:

I. JURISDICTION AND VENUE

1. This action is brought pursuant to 42 U.S.C. § 1983 for violations of the Fourth and Fourteenth Amendments to the United States Constitution and various state common law claims. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1343 *et seq.*

COMPLAINT FOR ASSAULT AND BATTERY, OUTRAGEOUS
CONDUCT, USE OF EXCESSIVE FORCE, INTENTIONAL INFLECTION
OF EMOTIONAL DISTRESS, AND NEGLIGENCE
Page 1 of 5

Law Offices of
Lembhard G. Howell, P.S.
Pacific Building, Suite 2105
Seattle, Washington 98104
(206) 623-5296

ORIGINAL

Summons issued 8/22/02

2. There exists a common nucleus of operative facts as to plaintiff's state and federal claims. As a consequence, this Court has pendent jurisdiction over the state claims pursuant to 28 U.S.C. § 1367.

3. Venue in the captioned District Court pursuant to 28 U.S.C. § 1391 stems from the fact that the events or omissions giving rise to the claims occurred in the judicial district of the captioned District Court.

4. The events and actions complained of occurred in King County, Washington, within the jurisdiction of this Court.

II. PARTIES

5. Plaintiff Marlo I. Harrison is a resident of King County, Washington.

6. Defendant City of Tukwila is a governmental entity with the right to sue and be sued in its own name and stead.

7. Pursuant to RCW Chapter 4.96, plaintiff has served defendant City of Tukwila with a claim for damages, which complies with the requirements of RCW Chapter 4.96. More than 60 days have elapsed since the claims for damages were served on defendant City of Tukwila. The Claim is attached to this Complaint as Exhibit A.

8. Defendant City of Tukwila Police Officers 1-5 were employed by defendant City of Tukwila as police officers and at all times material were acting within the scope of their employment. Upon discovery of their identities, the same will be substituted herein.

III. BACKGROUND FACTS

9. On March 28, 2008, plaintiff was present at 4510 Southcenter Boulevard in Tukwila.

10. Tukwila Police Officers were called to this location to investigate a domestic disturbance.

11. Plaintiff was approached by Tukwila Police Officers and did not resist the officers.

12. The Tukwila Police Officers handcuffed plaintiff, and while he was handcuffed, the officers jumped on him and injured his left leg. He was unable to bear weight on his left leg after the injury.

13. Plaintiff was then taken to the King County Jail on a domestic violence charge, which was later dropped.

14. Plaintiff was not immediately taken to the hospital after being taken to jail, despite his complaints to staff that he was unable to ambulate. Finally, on his third day in jail when his left leg became painfully swollen, he was taken from the jail Harborview Medical Center where he was discovered to have a tibial/fibular fracture of his left lower leg.

15. Plaintiff required major surgery to correct the fractures of his left leg.

IV. CLAIMS AND CAUSES OF ACTION

A. VIOLATION OF 42 U.S.C. § 1983

16. Plaintiff realleges each and every allegation in the preceding paragraphs as though fully set forth here.

17. Defendant police officers violated plaintiff's civil rights under the Fourth and Fourteenth Amendments to the United States Constitution.

18. As a result of defendant police officers' violation of 42 U.S.C. § 1983 plaintiff suffered injuries.

B. ASSAULT AND BATTERY

19. Plaintiff realleges each and ever allegation in the preceding paragraphs as though fully set forth here.

20. The actions of defendant police officers constituted assault and battery.

C. OUTRAGE

21. Plaintiff realleges each and every allegation in the preceding paragraphs as though fully set forth here.

22. Defendant police officers' conduct was extreme and outrageous.

23. Defendant police officers intentionally or recklessly inflicted emotional distress upon plaintiff.

24. As a result of defendant police officers' tortious conduct, plaintiff suffered severe emotional distress.

D. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

25. Plaintiff realleges each and every allegation in the preceding paragraphs as though fully set forth here.

26. Defendants had a duty to deal with plaintiff in a careful and professional manner so that he would not be harmed.

27. Defendants breached their duty.

28. As a result of defendants' tortious conduct, plaintiff suffered emotional distress.

E. NEGLIGENCE

29. Plaintiff realleges each and every allegation in the preceding paragraphs as though fully set forth here.

30. The actions of defendant police officers were negligent.

V. REQUEST FOR RELIEF

Plaintiff requests that the court enter judgment against each of the defendants as follows:

- a. Awarding plaintiff special damages, in an amount to be proven at trial – medical expenses.
- b. Awarding plaintiff general damages, in an amount to be proven at trial, including, but not limited to, pain and suffering and loss of enjoyment of life.
- c. Awarding plaintiff costs and attorneys' fees incurred in this action pursuant to his claim under 42 U.S.C. § 1983, pursuant to 42 U.S.C. § 1988, against defendant police officers.
- d. Awarding plaintiff punitive damages against defendant police officers.
- e. Such additional relief which the court finds equitable and just.

DATED this 22nd day of December, 2008.

Law Offices of Lembhard G. Howell, P.S.

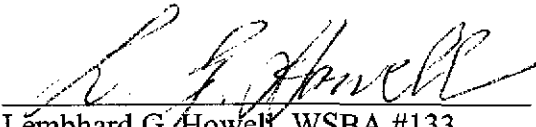


Lembhard G. Howell, WSBA #133
Attorney for Plaintiff

EXHIBIT A

(for City use only)	 <p>CITY OF TUKWILA, WASHINGTON Claim For Damages City Claim # (for City use only): _____</p>	(for City use only)
<p>The following party claims damages from the City of Tukwila in the amount of \$ <u>undetermined</u> arising out of the circumstances described below:</p>		
<p>Claimant Name: <u>MARIO I. HARRINGTON</u></p>		
<p>Street Address: <u>14274 S.E. 6th Street</u></p>		
<p>City/State/Zip: <u>Bellevue, WA 98007</u></p>		
<p>Home Phone: <u>(425) 644-3530</u> <u>(425) 747-8367</u></p>		<p>Work Phone: <u>N/A</u></p>
<p>Residence address six months prior to occurrence (if different from above):</p>		
<p>Date of Occurrence: <u>03/26/08</u></p>		<p>Time: <u>2:00 p.m. approximately</u></p>
<p>Location of Occurrence:</p>		
<p>OCCURRENCE DESCRIPTION (Please use reverse side of form if additional space is needed.)</p> <ol style="list-style-type: none"> 1. Describe occurrence, nature of the defects, or acts of negligence causing damages. 2. Provide a list of witnesses (name, address, phone), if applicable, to the occurrence. 3. Attach copies of all documentation relating to expenses, injuries, losses and/or estimates for repair. 4. Have you submitted a claim for damages to your insurance company? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <p>If yes, please provide name of insurance company: _____ Policy #: _____</p> <p>OCCURRENCE DESCRIPTION: <u>Tukwila Police were called to 4510</u> <u>Southcenter Blvd. Officers C. Gardner #115, S. Forney #0134</u> <u>Boyd and 2 other officers responded. Claimant did not resist</u> (Please use reverse side of form if additional space is needed.)</p>		
<p>The following additional claimant information is required for vehicle claims only: <u>N/A</u></p>		
<p>License Plate #:</p>		<p>Driver's License #:</p>
<p>Vehicle Type (year/make/model):</p>		
<p>DRIVER:</p>		<p>OWNER:</p>
<p>Address:</p>		<p>Address:</p>
<p>City/State/Zip:</p>		<p>City/State/Zip:</p>
<p>Phone:</p>		<p>Phone:</p>
<p>Passenger Name & Address:</p>		<p>Passenger Name & Address:</p>
<p>Owner's insurance Company:</p>		<p>Policy #:</p>
<p>Please return this completed, signed and notarized <i>Claim For Damages</i> form to the City Clerk's Office, 6200 Southcenter Boulevard, Tukwila, Washington 98188; 206-433-1800.</p>		

Claim For Damages (Continued)

OCCURRENCE DESCRIPTION (Continued): _____ and while he was handcuffed
 _____ officers jumped on him and fractured his leg in two places.
 _____ Claimant alleges that unnecessary and excess force was used
 _____ against him at the time of his arrest. Medical treatment
 _____ was at Harborview Medical Center. The Discharge Summary
 _____ is attached.

Claimant is represented by:

Lembhard G. Howell

720 Third Avenue, Suite 2105

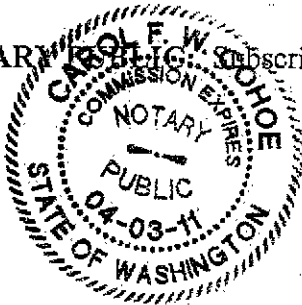
Seattle, WA 98104

Tel. 206-623-5296

CLAIMANT: I, MARLO I. HARRISON, being first duly sworn, depose and say that
 I am the claimant above described; that I have read the above claim, know the contents thereof, and
 believe the same to be true and correct.

Claimant Signature: Marlo I. Harrison

NOTARY PUBLIC: Subscribed and sworn to before me this 13th day of August, 2008.



Notary Signature: Carol F.W. Cohoe

Name as Commissioned: CAROL F.W. COHOE

Notary Public in and for the State of Washington,

Residing at: Renton WA

My Appointment Expires: 04-03-2011

(for City use only)

ATTACHMENTS:

- | | |
|---|--------------------------------------|
| <input type="checkbox"/> POLICE REPORT | <input type="checkbox"/> PHOTOGRAPHS |
| <input type="checkbox"/> COLLISION REPORT | <input type="checkbox"/> OTHER |
| <input type="checkbox"/> ESTIMATES | |
| <input type="checkbox"/> BILLS | |

DISTRIBUTION:

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> MAYOR'S OFFICE | <input type="checkbox"/> POLICE CHIEF |
| <input type="checkbox"/> CITY ATTORNEY | <input type="checkbox"/> FIRE CHIEF |
| <input type="checkbox"/> PUBLIC WORKS DIRECTOR | <input type="checkbox"/> P&R DIRECTOR |
| <input type="checkbox"/> DCD DIRECTOR | <input type="checkbox"/> OTHER |